

WAGANAKISING ODAWAK STATUTE #
PATERNITY AND CUSTODY

SECTION I. PURPOSE AND TITLE

The purpose of this Statute is to determine paternity and/or the custody and care of a child, less than eighteen (18) years of age, born to unmarried parents. The Tribe encourages the protection and preservation of the continuity of family, but recognizes that in the event of a child born to parents that live separately or later become separated, the care of the child needs to be established.

SECTION II. DEFINITIONS

A. “*Child*” or “*Children*” means a son(s) or daughter(s) considered in relation with the father or mother.

B. “*Court*” means the Little Traverse Bay Bands of Odawa Indians Tribal Court.

C. “*Marriage*” means the legal and voluntary union of two persons to the exclusion of all others.

D. “*Parenting Time*” means the time that the non-custodial parent spends with a child, and is often set according to a schedule as a result of a court order.

E. “*Putative Father*” generally means a man whose legal relationship to a child has not been established but who is alleged to be or claims that he may be the biological father of a child who is born to a woman to whom he is not married at the time of the child’s birth.

F. “*Territorial Jurisdiction of the Little Traverse Bay Bands of Odawa Indians*” means “*areas referenced in Public Law 103-324, 25 USC Section 1300k-2(b)(2)(A) as the boundaries*”

1 of the reservations for the Little Traverse Bay Bands as set out in Article I, paragraphs 'third
2 and fourth' of the Treaty of 1855, 11 Stat.621." Little Traverse Bay Bands Constitution, Article
3 V(A)(1)(a).
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5 **G.** "Tribe" means the Little Traverse Bay Bands of Odawa Indians.
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8 **SECTION III. JURISDICTION** 9

10 The Court shall have jurisdiction over determination of paternity and/or child custody, child
11 support, and visitation where at least one (1) parent to the proceedings is a Tribal Citizen of the
12 Little Traverse Bay Bands of Odawa Indians and has been a bona fide resident of the Tribal
13 Jurisdiction for a period of at least one hundred eighty (180) days prior to the filing of the action.
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16 **SECTION IV. ESTABLISH PATERNITY** 17

18 **A.** Presumption that the Father is the Putative Father if either of the following occurs:
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20 **1.** He and the child's mother are or were married to each other and the child is born
21 during the marriage.
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23 **2.** With his consent, he is listed as the father on the child's birth certificate and he
24 has acknowledged his paternity in writing by and has signed an Affidavit of Parentage
25 along with the mother's signature.
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27 **B.** If the presumption is disputed then the person establishing or denying paternity may
28 request a court order for DNA testing.
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31 **SECTION V. AUTOMATIC CUSTODY** 32

33 An unmarried mother, who gives birth to a child, shall have full legal and physical custody from
34 the time the child is born, unless the Putative Father has established paternity.

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3 **SECTION VI. CHILD CUSTODY, VISITATION AND SUPPORT**
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5 **A.** After paternity is established, the Court shall have the authority to determine the custody
6 of any child less than eighteen (18) years of age. Custody is the care, control and maintenance of
7 a child which includes legal and physical custody.
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9 **1.** Legal custody is the decision making authority.
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11 **2.** Physical custody is the caregiving authority.
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13 **B.** The Court shall have jurisdiction to award custody of a minor child to one of the parents,
14 or both of the parents.
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16 **C.** The court must order joint physical custody of a child to both parents unless the court
17 determines that joint physical custody is not in the best interests of the child as set forth in this Statute.
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19 **D.** A person who is giving legal custody may make important life decisions for a child, such
20 as health care, education, child care and general welfare.
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22 **1.** Joint legal custody gives both parents the right to make these decisions.
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24 **2.** Sole legal custody gives one parent all decision-making responsibilities.
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26 **E.** A person who is giving physical custody has actual physical residency of a child.
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28 **1.** Joint physical custody means that each parent will have specific times with a child.
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30 **2.** Sole physical custody means that one parent provides for the day-to-day care for the child
31 and the non-custodial parent may be given parenting time.
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1 **F.** In determining the best interest of the child, the Court shall consider all relevant factors
2 including:

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4 **1.** The love, affection, and other emotional ties existing between the parent involved
5 and the child.

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7 **2.** The capacity and disposition of the parent to give the child love, affection, and
8 guidance and to continue the child's education.

9
10 **3.** The capacity and disposition of a parent, for reasons other than poverty, to
11 provide adequate food, clothing, shelter, medical care, education, or supervision
12 necessary for the child's health and well-being.

13
14 **4.** The ability of a parent to provide a stable and satisfactory environment for the
15 child.

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17 **5.** The mental and physical health of the parent.

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19 **6.** The home, school, and community record of the child.

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21 **7.** The wishes of the child may be weighed by the Court, but are not controlling to
22 the Court's decision. The Judge will meet with the child in his or her chambers to discuss
23 the child's wishes.

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25 **8.** The interaction and interrelationship of the child with siblings and any other
26 person who may significantly affect the child's best interest.

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28 **9.** The willingness and ability of each of the parent to facilitate and encourage a
29 close and continuing parent-child relationship between the child and the other parent.

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31 **10.** Domestic violence, regardless of whether the violence was directed against or
32 witnessed by the child.

1 **11.** Any other factor considered by the court to be relevant to a particular child
2 custody dispute.

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4 **G.** The Court shall not consider conduct of a proposed custodian that does not affect his or
5 her relationship to the child.

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7 **H.** The Court shall have no presumption that one parent is better suited to be a custodian
8 because of gender.

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10 **I.** Differences in financial circumstances alone shall not be a deciding factor in the
11 determination of custody.

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13 **J.** The Court shall have the authority to require the non-custodial parent to pay such sum as
14 the Court may determine appropriate and proper for the support and maintenance of the child.

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16 **K.** The Court shall designate visitation for the non-custodial parent or parent(s) and shall
17 provide for the foster and expansion of the relationship between the non-custodial parent(s) and
18 the child whenever possible, unless the Court finds, after a hearing, that visitation would
19 endanger seriously the child's physical, mental or emotional health.

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21 **L.** The Court, upon petition of either parent to whom custody or visitation of the minor child
22 may be awarded, may revise, amend or alter any order concerning the care, custody, support or
23 visitation rights with any child consistent with the best interests of the child.

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25 **M.** Changes in domicile where the custodial parent wants to move out-side of the Tribal
26 Territorial Jurisdiction, shall require prior Court approval. The Court shall consider the following
27 factors:

28
29 **1.** Consent of both parents.

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31 **2.** Prospective advantages of the move for improvement of the general quality of life
32 for the custodial parent and child.

1
2 **3.** The likelihood of the custodial parent complying with the Tribal Court Order once
3 he or she in no longer resides within the Tribal Territory.

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5 **4.** The extent to which there will be a realistic opportunity for non-custodial
6 visitation which can continued to foster the relationship between the non-custodial
7 parent(s) and the child.

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9 **N.** Both custodial and non-custodial parents shall notify the Court of any changes in
10 domicile or residency.

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12 **O.** When the Court has ordered periodic support payments under this code, and the parent
13 does not pay as ordered, the Court shall use the same methods to collect these payments as it
14 would to enforce any money judgment in a civil action, including contempt.

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17 **SECTION VII. TEMPORARY INTERIM ORDERS**

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19 **A.** The Court may issue temporary orders during the pending of all proceedings involving
20 child custody, child support and visitation.

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22 **B.** Such orders may be granted upon the motion of either parent or on the Court's own
23 motion. A hearing shall be held prior to the issuance of such orders, unless the Court determines
24 that an emergency exists or a parent cannot be found, in which case such orders may be issued
25 ex-parte.

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27 **C.** Emergency may be interpreted to include, but not limited to:

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29 **1.** A danger of physical abuse to the spouse or child.

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31 **2.** Severe emotional abuse.

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33 **3.** A lack of means for interim subsistence.

4. Danger that child will be removed from jurisdiction.

D. If the initial order is issued ex-parte, a full hearing on the temporary order shall be held within fourteen (14) days.

SECTION VIII. ENFORCEMENT

When either parent fails willfully to comply with an order of the Tribal Court, the other parent may file a petition with the Court alleging such failure. The Court shall then issue notice to the parent, which shall include a copy of the petition, and set a date for the hearing. At the hearing, the Court shall take testimony as to the alleged failure to comply with its order, and issue any order which it shall deem just and proper under the circumstances

SECTION IX. SAVING CLAUSE

In the event that any phrase, provision, part, paragraph, subsection or section of this statute is found by a court of competent jurisdiction to violate the Constitution, laws, ordinances or statutes of the Little Traverse Bay Bands of Odawa Indians, such phrase, provision, part, paragraph, subsection or section shall be considered to stand alone and to be deleted from this statute, the entirety of the balance of the statute to remain in full and binding force and effect.

SECTION X. EFFECTIVE DATE

Effective upon signature of the Executive or 30 days from Tribal Council approval which ever comes first or if the Executive vetoes the legislation, then upon Tribal Council override of the veto.

CERTIFICATION